

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS R. RODELLA,

Defendant.

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Case No.: 14-CR-2783 JB

**DEFENDANT’S REPLY TO UNITED STATES RESPONSE TO DEFENDANT’S
MOTION FOR NEW TRIAL [DOC. 134]**

The Defendant, Thomas R. Rodella, by his attorneys, Robert J. Gorence and Louren Oliveros of Gorence & Oliveros, P.C., hereby submits his Reply to United States’ Response to Defendant’s Motion for New Trial. Mr. Rodella is appreciative that the Court has set this matter for an evidentiary hearing.

At the hearing, Mr. Rodella will respond to the government’s concerns that “the defense made incorrect claims” through compelled witness testimony as well as compelling the production of records. Specifically, Mr. Rodella will call, at a minimum: Nathaniel Salazar; Lisa Bronowicz; Loreen Chavez; Simon Gallegos; Patsy Romero; Paula Black; Heidi Tafoya; Darlene Romero; Dr. Elizabeth Davidson; Clara Smith; Nanette Martinez; Renee Dominguez; and Michael Tafoya. Additionally, a subpoena will be used to obtain the entire personnel file for Mr. Tafoya from Easter Seals El Mirador to determine why he was escorted off the property on August 27, 2014 following an assault on a resident and his current work status.

It appears, upon information and belief and as will be developed by the testimony of Mr. Tafoya’s supervisors and others, that Mr. Tafoya was put on leave pending a determination of the allegations that he had physically abused a resident. At trial, Mr. Tafoya testified as follows:

Q: And currently are you on leave pending trial?

A: Yes I am.

September 22, 2014 Transcript, pp. 3-4. The evidence is not merely impeachment evidence, but evidence central to the government's portrayal of Mr. Tafoya as a gentle, patient caretaker of elderly and goes directly to his credibility on material issues in this case. If Mr. Tafoya had, in fact, been put on administrative leave for assaulting a resident, his trial testimony would be materially incorrect. Worse yet, if Mr. Tafoya had been initially discharged and then was reinstated for the purpose of the trial, that would be a material misrepresentation as well. What is clear is that Michael Tafoya was escorted off the property and has never returned to work. Mr. Rodella will further elicit testimony regarding Ms. Dominguez and the reasons she left her employment from El Centro as well as the names she used to obtain or apply for benefits.

Although not raised in his initial motion, Mr. Rodella will supplement his Motion for a New Trial with regard to the cross-examination of Tommy Rodella, Jr. As the Court will recall, Ms. Neda never provided Mr. Rodella, Jr.'s medical records to counsel for Mr. Rodella at any time prior to trial. The documents were copied and provided shortly after the cross-examination of Mr. Rodella, Jr. The documents numbered over 400 pages and counsel read them speedily over the lunch hour. Attached as Exhibit A is a letter from Mr. Rodella, Jr.'s treating VA psychiatrist, Dr. Elizabeth Davidson. The testimony of Dr. Davidson could not have been produced on the notice with which counsel received the medical records. As such, counsel for Mr. Rodella never had the opportunity to rebut Ms. Neda's cross-examination of Mr. Rodella, Jr. and her argument that he had mental problems and cognitive deficiencies which affected his credibility. Mr. Rodella, Jr. was a critical witness and the government's late production of his

medical records, when used in an egregiously misleading way and without a good faith basis because she never talked to Dr. Davidson, helped cause a miscarriage of justice.

For these reasons, the criteria necessary for a new trial set forth in *United States v. Sinclair*, 109 F.3d 1527 (10th Cir. 1997), have been satisfied and an evidentiary hearing and new trial are warranted.

Respectfully submitted,

/s/ Robert J. Gorence 11/06/14

Robert J. Gorence
Louren Oliveros
Gorence & Oliveros, P.C.
1305 Tijeras Avenue, NW
Albuquerque, NM 87102
Phone: (505) 244-0214
Fax: (505) 244-0888
Email: gorence@golaw.us
Email: oliveros@golaw.us

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was emailed to counsel of record by CM/ECF this 7th day of November, 2014.

/s/ Robert J. Gorence 11/06/14

Robert J. Gorence